

UNITED STATES BANKRUPTCY COURT – MIDDLE DISTRICT OF FLORIDA

PROOF OF CLAIM

Name of Debtor

Taylor, Bean & Whitaker Mortgage Corp.

Case Number:

3:09-bk-07047-JAF

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Name of Creditor (The person or other entity to whom the debtor owes money or property):

Sun Life Assurance Company of Canada

Name and address where notices should be sent:

c/o Jo E. Hartwick, atty
Stutzman, Bromberg, Esserman & Plifka, P.C.
2323 Bryan Street, Suite 2200
Dallas, Texas 75201

Telephone number: (214) 969-4900

Account or other number by which creditor identifies debtor:

CLAIM FILED
JACKSONVILLE, FLORIDA

☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim.
Attach copy of statement giving particulars.

☐ Check box if you have never received any notices from the bankruptcy court in this case.

☐ Check box if you have never received any notices from the bankruptcy court in this case.

THIS SPACE IS FOR COURT USE ONLY

1. Basis for Claim

- ☐ Goods sold
☐ Services performed
☐ Money loaned
☐ Personal injury/wrongful death
☐ Taxes

NOV 20 2009
CLERK, U.S. BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA

☒ Other LEASE OF REAL PROPERTY - SEE ATTACHED

- ☐ Retiree benefits as defined in 11 U.S.C. § 1114(a)
☐ Wages, salaries, and compensation (fill out below)
Your Social #: _____
Unpaid compensation for services performed
from _____ to _____
(date) (date)

2. Date debt was incurred:

Lease dated April 11, 2007

3. If court judgment, date obtained:

4. Total Amount of Claim at Time Case Filed:

\$103,860.00 (see attached Summary of Claim for detail)

If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below.

- ☐ Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

5. Secured Claim.

- ☐ Check this box if your claim is secured by collateral (including a right of setoff).

Brief Description of Collateral:

- ☐ Real Estate ☐ Motor Vehicle

☒ Other: Security deposit

Value of Collateral: \$3,979.50

Amount of arrearage and other charges at time case filed
included in secured claim, if any:
\$ _____

6. Unsecured Priority Claim.

- ☐ Check this box if you have an unsecured priority claim
Amount entitled to priority:
Specify the priority of the claim:

- ☐ Wages, Salaries, or commissions (up to \$4000)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3).
☐ Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4).
☐ Up to \$1,800* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6).
☐ Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7).
☐ Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).
☐ Other: 11 U.S.C. § 365(d)(3); Order of Bankruptcy Court dated June 11, 2008

*Amounts are subject to adjustment on 4/1/98 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

7. Credits: The amounts of all payments on this claim has been credited and deducted for making this proof of claim.

8. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien.

DO NOT SEND ORIGINAL DOCUMENTS. If documents are not available, explain. If the documents are voluminous, attach a summary.

9. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

Date

11/19/09

Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any):

Jo E. Hartwick

Jo E. Hartwick, atty.

THIS SPACE IS FOR COURT USE ONLY

I, B & W Mortgage Corp.



00301

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In particular types of cases or circumstances, such as bankruptcy cases that are not filed voluntarily by a debtor, there may be exceptions to these general rules.

—DEFINITIONS—**Debtor**

The person, corporation, or other entity that has filed a bankruptcy case is called the debtor.

Creditor

A creditor is any person, corporation, or other entity to whom the debtor owed a debt on the date that the bankruptcy case was filed.

Proof of Claim

A form telling the bankruptcy court how much the debtor owed a creditor at the time the bankruptcy case was filed (the amount of the creditor's claim). This form must be filed with the clerk of the bankruptcy court where the bankruptcy case was filed.

Secured Claim

A claim is a secured claim to the extent that the creditor has a lien on the property of the debtor (collateral) that gives the creditor the right to be paid from that property before creditors who do not have liens on the property.

Examples of liens are a mortgage on real estate and a security interest in a car, truck, boat, television set, or other item of property. A lien may have been obtained through a court proceeding before a bankruptcy case began; in some states a court judgment is a lien. In addition, to the extent a creditor also owes money to the debtor (has a right of setoff), the creditor's claim may be a secured claim. (See also *Unsecured Claim*.)

Unsecured Claim

If a claim is not a secured claim it is an unsecured claim. A claim may be partly secured and partly unsecured if the property on which a creditor has a lien is not worth enough to pay the creditor in full.

Unsecured Priority Claim

Certain types of unsecured claims are given priority, so they are to be paid in bankruptcy cases before most other unsecured claims (if there is sufficient money or property available to pay these claims). The most common types of priority claims are listed on the proof of claim form. Unsecured claims that are not specifically given priority status by the bankruptcy laws are classified as *Unsecured Nonpriority Claims*.

ITEMS TO BE COMPLETED IN PROOF OF CLAIM FORM (IF NOT ALREADY FILLED IN)**Debtor:**

Fill in the name of the federal judicial district where the bankruptcy case was filed (for example, Central District of California), the name of the debtor in the bankruptcy case, and the bankruptcy case number. If you received a notice of the case from the court, all of this information is near the top of the notice.

Information about Creditor:

Complete the section giving the name, address, and telephone number of the creditor to whom the debtor owes money or property, and the debtor's account number, if any. If anyone else has already filed a proof of claim relating to this debt, if you never received notices from the bankruptcy court about this case, if your address differs from that to which the court sent notice, or if this proof of claim replaces or changes a proof of claim that was already filed, check the appropriate box on the form.

1. Basis for Claim:

Check the type of debt for which the proof of claim is being filed. If the type of debt is not listed, check "Other" and briefly describe the type of debt. If you were an employee of the debtor, fill in your social security number and the dates of work for which you were not paid.

2. Date Debt Incurred:

Fill in the date when the debt first was owed by the debtor.

3. Court Judgments:

If you have a court judgment for this debt, state the date the court entered the judgment.

4. Total Amount of Claim at Time Case Filed:

Fill in the total amount of the entire claim. If interest or other charges in addition to the principal amount of the claim are included, check the appropriate place on the form and attach an itemization of the interest and charges.

5. Secured Claim:

Check the appropriate place if the claim is a secured claim. You must state the type and value of property that is collateral for the claim, attach copies of the documentation of your lien, and state the amount past due on the claim as of the date the bankruptcy case was filed. A claim may be partly secured and partly unsecured. (See DEFINITIONS, above).

6. Unsecured Priority Claim:

Check the appropriate place if you have an unsecured priority claim, and state the amount entitled to priority. (See DEFINITIONS, above). A claim may be partly priority and partly nonpriority, if, for example, the claim is for more than the amount given priority by the law. Check the appropriate place to specify the type of priority claim.

7. Credits:

By signing this proof of claim, you are stating under oath that in calculating the amount of your claim you have given the debtor credit for all payments received from the debtor.

8. Supporting Documents:

You must attach to this proof of claim form copies of documents that show the debtor owes the debt claimed or, if the documents are too lengthy, a summary of those documents. If documents are not available, you must attach an explanation of why they are not available.

Summary of Claim of Sun Life Assurance Company of Canada

1. This claim is made by Sun Life Assurance Company of Canada ("Sun Life"). Sun Life is landlord and Taylor, Bean & Whitaker Mortgage Corp. ("Debtor") is tenant under that certain lease of nonresidential real property dated as of April 11, 2007 (the "Lease"), for those certain premises located on the first floor of the office building located at 2901 Dallas Parkway, Plano, Texas 75093. The term of the Lease expires on August 31, 2013. A true and correct copy of the Lease (with amendment) is attached hereto as Exhibit "A".

2. The Lease was rejected pursuant to the Bankruptcy Court's Order Granting Debtor's Motion to Reject Office Unexpired Leases of Non-Residential Real Property, entered October 23, 2009.

3. Sun Life's claim is therefore calculated as follows, as set forth in detail on the schedule attached hereto as Exhibit "B".

(a)	Amount due pursuant to section 502(b)(6)(A):	\$103,860.00*
(b)	Amount due pursuant to section 502(b)(6)(B):	<u>\$0.00</u>

TOTAL: \$103,860.00

4. This claim does not include any post-petition amounts due under the Lease pursuant to sections 365(d)(3) or 503(b) of the Bankruptcy Code, and is made without waiver of any claim or right to receive payment of same.

5. Sun Life reserves all rights to amend or supplement this claim in accordance with applicable law.

* The rent reserved by the lease for one year, as allowed under 11 U.S.C. § 502(b)(6)(A), is calculated as follows: Monthly base rent (\$8,295.00) and operating expense reimbursement (\$360.00) total \$8,655.00 per month x 12 months = \$103,860.00.

EXHIBIT "A"

OFFICE LEASE

**PARKWAY CENTRE I
2901 DALLAS PARKWAY
PLANO, TEXAS**

Landlord: Sun Life Assurance Company of Canada

Tenant: Taylor Bean & Whitaker Mortgage Corp.

Date: April 11, 2007

This Lease consists of four parts:

Part I	Cover Sheet
Part II	Standard Lease Provisions
Part III	Additional Provisions (if any) and
Part IV	Exhibits

EXHIBIT A - Floor Plan of Premises
EXHIBIT B - Extension Option
EXHIBIT C - Landlord's Notice of Lease Term Dates
EXHIBIT D - Rules and Regulations

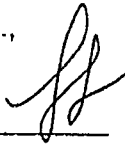
PART I

COVER SHEET

The terms listed below shall have the following meanings throughout this Lease:

DATE OF LEASE: April 11, 2007, the date on which Landlord has signed this Lease

LANDLORD: Sun Life Assurance Company of Canada, a Canadian corporation

TENANT: Taylor Bean & Whitaker Mortgage Corp., a Florida corporation 

TENANT'S ADDRESS: 101 NE 2nd Street
Ocala, FL 34470

MANAGER: Holt Lunsford Commercial, Inc.

MANAGER'S ADDRESS: Holt Lunsford Commercial, Inc.
5055 Keller Springs, Suite 300
Addison, TX 75001

PREMISES: The area consisting of approximately 2,274 rentable square feet of the Building, as shown on Exhibit A attached hereto

BUILDING: The building in which the Premises are located, known as Parkway Centre I, with a street address of 2901 Dallas Parkway, located at Plano, Texas, and consisting of a total of approximately 87,437 square feet of space

PROPERTY: The Building, other improvements located at 2901 Dallas Parkway, Plano, Texas, and land (the "Lot")

TENANT'S PERCENTAGE: 2.60% (2,274 rentable square feet in the Premises divided by 87,437 rentable square feet in the Building)

PERMITTED USES: Office purposes

TENANT IMPROVEMENTS: Landlord is leasing the Premises to Tenant "as is" "where is" without representation or warranty, without any obligation by Landlord to alter, remodel, improve, repair or decorate any part of the Premises.

**SCHEDULED
COMMENCEMENT DATE:**

April 15, 2007

TERM:

Thirty-nine (39) full calendar months

**BASE RENT (does not
include Electrical Costs):**

Tenant shall pay Base Rent for the Premises in
accordance with the following schedule:

<u>Months</u>	<u>Rent Per Month</u>	<u>Annual Rent p.r.s.f.</u>
1 - 39	\$3,979.50	\$21.00

* Landlord hereby conditionally abates the first three (3) consecutive full monthly installments of Base Rent described above on the condition Tenant fulfills all Lease obligations. Tenant shall pay all other obligations accruing during such months. If Tenant defaults under this Lease beyond any applicable period of notice and cure, any remaining rent abatement shall cease from the date of such default, and Tenant shall immediately pay to Landlord all sums previously abated hereunder.

*See Attached
rent schedule.*
LL

PREPAID RENT:

\$3,979.50

SECURITY DEPOSIT:

\$3,979.50

**PUBLIC LIABILITY
INSURANCE AMOUNT:**

\$3,000,000.00

LANDLORD'S BROKER:

Holt Lunsford Commercial, Inc.

TENANT'S BROKER:

Vanguard Commercial Group, Inc.

EXTENSION OPTION:

See Exhibit B attached hereto.

Landlord: Sun Life Assurance Company of Canada

Tenant: Taylor, Bean & Whitaker Mortgage Corp.

**Office Lease: PARKWAY CENTRE I
Plano, Texas**

**Manager's Address: Holt Lunsford Commercial, Inc.
5055 Keller Springs, Suite 300
Addison, TX 75001**

Rent Schedule to become part of the Lease dated April 11, 2007

Commencement Date: April 15, 2007

Security Deposit w/Lease: \$3,979.50

First month's rent w/Lease: \$3,979.50

First month: April 15, 2007 to May 15, 2007

Following three (3) months will be abated (May 16th to August 15th)

August 16th to August 31st will be paid on August 01, 2007 equals ½ Month's rent.

Beginning September 01, 2007 and thereafter rents will be paid according to lease provisions.

*DATES ARE
OFF BY A
DAY*

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PART II STANDARD LEASE PROVISIONS

ARTICLE I PREMISES

1.1 Premises.

(a) *Demise of Premises.* This Lease (the "Lease") is made and entered into by and between Landlord and Tenant and shall become effective as of the Date of Lease. In consideration of the mutual covenants made herein, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises, on all of the terms and conditions set forth in this Lease.

(b) *Relocation.* Landlord reserves the right to relocate the Premises to comparable space within the Building by giving Tenant thirty (30) days prior written notice of such intention to relocate; provided, however, that Landlord shall pay all reasonable relocation costs of physically moving Tenant to such other space.

(c) *Access to Premises.* Landlord shall have reasonable access to the Premises, at any time during the Term, to inspect Tenant's performance hereunder and to perform any acts required of or permitted to Landlord herein, including, without limitation, (i) the right to make any repairs or replacements Landlord deems necessary, (ii) the right to show the Premises to prospective purchasers and mortgagees, and (iii) during the last nine (9) months of the Term, the right to show the Premises to prospective tenants. Landlord shall at all times have a key to the Premises, and Tenant shall not change any existing lock(s), nor install any additional lock(s) without Landlord's prior consent. Except in the case of any emergency, any entry into the Premises by Landlord shall be on reasonable advance notice.

1.2 *Common Areas.* Tenant shall have the right to use, in common with other tenants, the Building's common lobbies, corridors, stairways, and elevators necessary for access to the Premises, and the common walkways and driveways necessary for access to the Building, the common toilets, corridors and elevator lobbies of any multi-tenant floor, and the parking areas for the Building ("Common Areas"). Tenant's parking ratio shall not exceed twelve (12) spaces in total. Tenant's use of the Building parking areas shall be on an unreserved, non-exclusive basis and solely for Tenant's employees and visitors. Landlord shall not be liable to Tenant, and this Lease shall not be affected, if any parking rights of Tenant hereunder are impaired by any law, ordinance or other governmental regulation imposed after the Date of Lease. If Landlord grants to any other tenant the exclusive right to use any particular parking spaces, neither Tenant nor its visitors shall use such spaces. Use of the Common Areas shall be only upon the terms set forth at any time by Landlord. Landlord may at any time and in any manner make any changes, additions, improvements, repairs or replacements to the Common Areas that it considers desirable, provided that Landlord shall use reasonable efforts to minimize interference with Tenant's normal activities. Such actions of Landlord shall not constitute constructive eviction or give rise to any rent abatement or liability of Landlord to Tenant.

ARTICLE II TERM

2.1 *Commencement Without Tenant Improvements.* The Term shall begin on the Scheduled Commencement Date and shall continue for the length of the Term, unless sooner terminated as provided in this Lease

2.2 **Commencement Notice.** The dates upon which the Term shall commence and end shall be confirmed in Landlord's Notice of Lease Term Dates ("Notice"), substantially in the form attached as Exhibit C. Landlord shall deliver the Notice to Tenant after Landlord offers possession of the Premises to Tenant or Tenant enters into occupancy of the Premises. Tenant shall promptly return to Landlord a countersigned original of the Notice, provided that Landlord's failure to deliver the Notice shall not delay the Commencement Date.

ARTICLE III RENT

3.1 Base Rent.

(a) *Payment of Base Rent.* Tenant shall pay the Base Rent each month in advance on the first day of each calendar month during the Term. If the Commencement Date is other than the first day of the month, Tenant shall pay a proportionate part of such monthly installment on the Commencement Date. An adjustment in the Base Rent for the last month of the Term shall be made if the Term does not end on the last day of the month. All payments shall be made to Manager at Manager's Address or to such other party or to such other place as Landlord may designate in writing, without prior demand and without abatement, deduction or offset. All charges to be paid by Tenant hereunder, other than Base Rent, shall be considered additional rent for the purposes of this Lease, and the words "rent" or "Rent" as used in this Lease shall mean both Base Rent and additional rent unless the context specifically or clearly indicates that only Base Rent is referenced.

(b) *Late Payments.* Tenant acknowledges that the late payment by Tenant to Landlord of any rent or other sums due under this Lease will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to ascertain. Therefore, if any rent or other sum due from Tenant is not received when due, Tenant shall pay to Landlord no later than ten (10) calendar days after the rental due date an additional sum equal to 5% of such overdue payment. In addition to such late charge, all such delinquent rent or other sums due to Landlord, including the late charge, shall bear interest beginning on the date such payment was due at the then maximum lawful rate permitted to be charged by Landlord. The notice and cure period provided in Paragraph 8.1(a) does not apply to the foregoing late charges and interest. If payments of any kind are returned for insufficient funds Tenant shall pay to Landlord an additional handling charge of \$50.00.

3.2 Additional Rent for Operating Expenses, Taxes, and Capital Costs.

(a) *Additional Rent.* For each Comparison Year, Tenant shall pay to Landlord as additional rent the sum of (1) the difference between Comparison Year Operating Expenses and the Base Year Operating Expenses, (2) the difference between the Comparison Year Taxes and the Base Year Taxes and (3) the Capital Costs, times Tenant's Percentage ("Tenant's Share of Expenses").

(b) *Definitions.* As used herein, the following terms shall have the following meanings:

(i) *Base Year.* The calendar year in which the lease term commences.

- (ii) *Comparison Year.* Each calendar year of the Term after the Base Year.
- (iii) *Lease Year.* Each successive 12 month period following the Commencement Date.
- (iv) *Operating Expenses.* The total cost of operation of the Property, including, without limitation, (1) premiums and deductibles for insurance carried with respect to the Property; (2) all costs of supplies, materials, equipment, and utilities used in or related to the operation, maintenance, and repair of the Property or any part thereof (including utilities, unless the cost of any utilities is to be paid for separately by Tenant pursuant to Paragraph 6.1(b)); (3) all labor costs, including without limitation, salaries, wages, payroll and other taxes, unemployment insurance costs, and employee benefits to the pro rata extent such employees are allocated to the Building; (4) all maintenance, management, janitorial, inspection, legal, accounting, and service agreement costs related to the operation, maintenance, and repair of the Property or any part thereof, including, without limitation, service contracts with independent contractors. Any of the above services may be performed by Landlord or its affiliates, provided that fees for the performance of such services shall be reasonable and competitive with fees charged by unaffiliated entities for the performance of such services in comparable buildings in the area. Operating Expenses shall not include Taxes, leasing commissions; repair costs paid by insurance proceeds or by any tenant or third party; the initial construction cost of the Building or any depreciation thereof; any debt service or costs related to sale or financing of the Property; any capital expenses, except those which normally would be regarded as operating, maintenance, or repair costs; tenant improvements provided for any tenant; or any special services rendered to tenants (including Tenant) for which a separate charge is made.
- (v) *Base Year Operating Expenses.* Operating Expenses incurred during the Base Year, provided that: (1) in the event that the Building is less than 95% occupied during the Base Year, then in determining the Base Year Operating Expenses, all Operating Expenses that may reasonably be determined to vary in accordance with the occupancy level of the Building, shall be grossed up to reflect 95% occupancy by multiplying the amount of such expenses by a fraction, the numerator of which is the total rentable square feet in the Building and the denominator of which is the average square feet in the Building that is occupied by tenants during the Base Year; and (2) if any extraordinary expenses are incurred during the Base Year which typically are not operations, maintenance, or repair costs of a stabilized property, as reasonably estimated by Landlord, then such expenses shall be excluded from the calculation of Operating Expenses during the Base Year.

- (vi) *Comparison Year Operating Expenses.* Operating Expenses incurred during the Comparison Year, provided that: (1) if the Building is less than 95% occupied during the Comparison Year, then in determining the Comparison Year Operating Expenses, all Operating Expenses that may reasonably be determined to vary in accordance with the occupancy level of the Building, shall be grossed up to reflect 95% occupancy by multiplying the amount of such expenses by a fraction, the numerator of which is the total rentable square feet in the Building and the denominator of which is the average square feet in the Building that is occupied by tenants during the Comparison Year; and (2) if any extraordinary expenses are incurred during the Comparison Year which typically are not operations, maintenance, or repair costs of a stabilized property, as reasonably estimated by Landlord, then such expenses shall be excluded from the calculation of Operating Expenses for that Comparison Year.
- (vii) *Taxes.* Any form of assessment, rental tax, license tax, margin tax (including, without limitation, all taxes levied attributable to taxable margin levied pursuant to Chapter 171 of the Texas Tax Code or any amendment, adjustment or replacement thereof), business license tax, levy, charge, tax or similar imposition imposed by any authority having the power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, library, drainage, or other improvement or special assessment district, as against the Property or any part thereof or any legal or equitable interest of Landlord therein, or against Landlord by virtue of its interest therein, and any reasonable costs incurred by Landlord in any proceedings for abatement thereof, including, without limitation, attorneys' and consultants' fees, and regardless of whether any abatement is obtained. Landlord's income and franchise taxes are excluded from Taxes, other than margin taxes.
- (viii) *Base Year Taxes.* Taxes incurred during the Base Year.
- (ix) *Comparison Year Taxes.* Taxes incurred during the Comparison Year.
- (x) *Capital Costs.* The annual cost of any capital improvements to the Property made by Landlord after the Base Year that are designed to increase safety, to reduce Operating Expenses, or to comply with any governmental law or regulation imposed after initial completion of the Building, amortized over such period as Landlord shall reasonably determine, using industry standards, together with a fixed annual interest rate equal to the Prime Rate plus 2% on the unamortized balance. The Prime Rate shall be the prime rate published in the Wall Street Journal on the date the construction is completed.

(c) *Estimate of Tenant's Share of Expenses.* Before each Comparison Year, and from time to time as Landlord deems appropriate, Landlord shall give Tenant estimates for the coming Comparison Year of Operating Expenses, Taxes, Capital Costs, and Tenant's Share of Expenses. Landlord shall make reasonable efforts to provide estimates fifteen (15) days before the beginning of each Comparison Year. Tenant shall pay one twelfth (1/12) of the estimated amount of Tenant's Share of Expenses with each monthly payment of Base Rent during the Comparison Year. Each Comparison Year, Landlord shall give Tenant a statement (the "Share of Expenses Statement") showing the Operating Expenses, Taxes, and Capital Costs for the prior Comparison Year, a calculation of Tenant's Share of Expenses due for the prior Comparison Year and a summary of amounts already paid by Tenant for the prior Comparison Year. Landlord shall make reasonable efforts to provide the Share of Expenses Statement within one hundred twenty (120) days after the end of the prior Comparison Year. Any underpayment by Tenant shall be paid to Landlord within thirty (30) days after delivery of the Share of Expenses Statement; any overpayment shall be credited against the next installment of Base Rent due, provided that any overpayment shall be paid to Tenant within thirty (30) days if the Term has ended. No delay by Landlord in providing any Share of Expenses Statement shall be deemed a waiver of Tenant's obligation to pay Tenant's Share of Expenses. Notwithstanding anything contained in this paragraph, the total rent payable by Tenant shall in no event be less than the Base Rent.

3.3 **Electrical Costs.** In addition to Base Rent, Operating Expenses and the amounts for electricity described in this Lease, Tenant must also pay to Landlord an amount equal to the product of (i) the cost of all electricity used by the Building less any excess electrical usage that is reimbursed by individual tenants ("Electrical Costs"), multiplied by (ii) Tenant's Proportionate Share. In addition, Tenant shall pay to Landlord 100% of any excess electricity usage (including, without limitation, HVAC after-hour) upon Landlord's demand therefor. Such amount shall be payable monthly based on Landlord's estimate of the amount due for each month, and shall be due on the Commencement Date and on the first day of each calendar month thereafter unless Landlord has theretofore furnished Tenant with information indicating the amount due, in which event such amount shall be due within ten (10) days after Landlord has delivered to Tenant an invoice therefor.

ARTICLE IV DELIVERY OF PREMISES AND TENANT IMPROVEMENTS

4.1 **Condition of Premises.** Landlord shall deliver the Premises to Tenant in its "as-is" condition.

4.2 **Delay in Possession.** If Landlord is unable to deliver possession of the Premises to Tenant on or before the Scheduled Commencement Date for any reason whatsoever, Landlord shall not be liable to Tenant for any loss or damage resulting therefrom and this Lease shall continue in full force and effect.

4.3 **Delivery and Acceptance of Possession.** Tenant shall accept possession and enter in good faith occupancy of the entire Premises and commence the operation of its business therein within thirty (30) days after the Commencement Date. Tenant's taking possession of any part of the Premises shall be deemed to be an acceptance and an acknowledgment by Tenant that (i) Tenant has had an opportunity to conduct, and has conducted, such inspections of the Premises as it deems necessary to evaluate its condition, (ii) except as otherwise specifically provided herein, Tenant accepts possession of the Premises in its then existing condition, "as-is",

including all patent and latent defects, (iii) Tenant Improvements have been completed in accordance with the terms of this Lease, except for defects of which Tenant has given Landlord written notice prior to the time Tenant takes possession, and (iv) neither Landlord, nor any of Landlord's agents, has made any oral or written representations or warranties with respect to such matters other than as set forth in this Lease.

4.4 **Early Occupancy.** If Landlord agrees in writing to allow Tenant or its contractors to enter the Premises prior to the Commencement Date, Tenant (and its contractors) shall do so upon all of the provisions of this Lease (including Tenant's obligations regarding indemnity and insurance), except those provisions regarding Tenant's obligation to pay Base Rent, which obligation shall commence on the Commencement Date.

ARTICLE V ALTERATIONS AND TENANT'S PERSONAL PROPERTY

5.1 Alterations.

(a) *Landlord's Consent.* Tenant shall not make any alterations, additions, installations, substitutes or improvements ("Alterations") in and to the Premises without first obtaining Landlord's written consent. Landlord shall not unreasonably withhold or delay its consent; provided, however, that Landlord shall have no obligation to consent to Alterations of a structural nature or Alterations that would violate the certificate of occupancy for the Premises or any applicable law, code or ordinance or the terms of any superior lease or mortgage affecting the Property. No consent given by Landlord shall be deemed as a representation or warranty that such Alterations comply with laws, regulations and rules applicable to the Property ("Laws"). Tenant shall pay Landlord's reasonable costs of reviewing or inspecting any proposed Alterations and any other costs that may be incurred by Landlord as a result of such Alterations.

(b) *Workmanship.* All Alterations shall be done at reasonable times in a first-class workmanlike manner, by contractors approved by Landlord, and according to plans and specifications previously approved by Landlord. All work shall be done in compliance with all Laws, and with all regulations of the Board of Fire Underwriters or any similar insurance body or bodies. Tenant shall be solely responsible for the effect of any Alterations on the Building's structure and systems, notwithstanding that Landlord has consented to the Alterations, and shall reimburse Landlord on demand for any costs incurred by Landlord by reason of any faulty work done by Tenant or its contractors. Upon completion of Alterations, Tenant shall provide Landlord with a complete set of "as-built" plans.

(c) *Mechanics and Other Liens.* Tenant shall keep the Property and Tenant's leasehold interest therein free of any liens or claims of liens, and shall discharge any such liens within ten (10) days of their filing. Before commencement of any work, Tenant's contractor shall provide payment, performance and lien indemnity bonds required by Landlord, and Tenant shall provide evidence of such insurance as Landlord may require, naming Landlord as an additional insured. Tenant shall indemnify Landlord and hold it harmless from and against any cost, claim, or liability arising from any work done by or at the direction of Tenant.

(d) *Removal of Alterations.* All Alterations affixed to the Premises shall become part thereof and remain therein at the end of the Term. However, if Landlord gives Tenant notice, at least thirty (30) days before the end of the Term, to remove any Alterations

made after the Commencement Date, Tenant shall remove the Alterations, make any repair required by such removal, and restore the Premises to its original condition.

5.2 Tenant's Personal Property.

(a) *In General.* Tenant may provide and install, and shall maintain in good condition, all trade fixtures, personal property, equipment, furniture and moveable partitions required in the conduct of its business in the Premises. All of Tenant's personal property, trade fixtures, equipment, furniture, movable partitions, and any Alterations not affixed to the Premises shall remain Tenant's property ("Tenant's Property").

(b) *Landlord's Lien.* Tenant hereby pledges and conveys to Landlord a security interest ("Landlord's Lien") in all of Tenant's Property as collateral security for the full and prompt payment of Base Rent and any additional rent as and when due and the full and faithful performance of Tenant's covenants herein contained. Upon Landlord's request, Tenant will execute and deliver financing statements and other documents reasonably required by Landlord to perfect Landlord's Lien. Tenant also agrees that Landlord's Lien may be enforced by distress sale, foreclosure, or by any other method, and that any and all costs incurred by Landlord by enforcement of this Landlord's Lien shall be payable to Landlord by Tenant. Tenant may not remove Tenant's Property from the Premises prior to the end of the Term without Landlord's prior written consent.

(c) *Payment of Taxes.* Tenant shall pay before delinquency all taxes levied against Tenant's Property and any Alterations installed by or on behalf of Tenant. If any such taxes are levied against Landlord or its property, or if the assessed value of the Premises is increased by the inclusion of a value placed on Tenant's Property, Landlord may pay such taxes, and Tenant shall upon demand repay to Landlord the portion of such taxes resulting from such increase.

ARTICLE VI LANDLORD'S COVENANTS

6.1 Services Provided by Landlord.

(a) *Services.* Landlord shall provide services, utilities, facilities and supplies equal in quality to those customarily provided by landlords in buildings of a similar design in the area in which the Property is located. Landlord shall provide reasonable additional Building operation services upon reasonable advance request of Tenant at reasonable rates from time to time established by Landlord. Landlord shall furnish space heating and cooling as normal seasonal changes may require to provide reasonably comfortable space temperature and ventilation for occupants of the Premises under normal business operation, daily from 8:00 a.m. to 6:00 p.m. (Saturdays from 9:00 a.m. to 1:00 p.m.), Sundays and legal state holidays excepted. If Tenant shall require space heating or cooling outside the hours and days above specified, Landlord shall provide such service at Tenant's expense in accordance with any advance notice requirements established from time to time by Landlord.

(b) *Separately Metered Utilities.* If the Premises are separately metered, Tenant shall pay all charges for all separately metered and separately billed gas, electricity, telephone and other utility services used, rendered or supplied upon or in connection with the Premises and shall indemnify Landlord against liability or damage on such account.

The costs of any utilities which are not separately metered shall be included as an Operating Expense. If Landlord has reason to believe that Tenant is using a disproportionate share of any utility which is not separately metered, Landlord may, at Landlord's election, and at Landlord's expense, conduct an engineering audit to estimate Tenant's actual use. If such audit determines that Tenant is using more than its proportionate share of any utility, Tenant shall reimburse Landlord for the cost of the audit and Tenant shall pay for any use above its proportionate share as additional rent.

(c) *Graphics and Signs.* Landlord shall provide, at Tenant's expense, identification of Tenant's name and suite numerals at the main entrance door to the Premises. All signs, notices, graphics and decorations of every kind or character which are visible in or from the Common Areas or the exterior of the Premises shall be subject to Landlord's prior written approval, which Landlord shall have the right to withhold in its absolute and sole discretion.

(d) *Right to Cease Providing Services.* In case of Force Majeure or in connection with any repairs, alterations or additions to the Property or the Premises, or any other acts required of or permitted to Landlord herein, Landlord may reduce or suspend service of the Building's utilities, facilities or supplies, provided that Landlord shall use reasonable diligence to restore such services, facilities or supplies as soon as possible. No such reduction or suspension shall constitute an actual or constructive eviction or disturbance of Tenant's use or possession of the Premises; provided, however, if the Premises are untenable and Tenant does not occupy the Premises for more than ten (10) consecutive days because of the unavailability of any such service due to Landlord's or Landlord's agents' negligence or intentional misconduct, Tenant shall, as its exclusive remedy therefor, be entitled to a reasonable abatement of Rent for such consecutive days (after such 10-day period) that the Premises are untenable and Tenant does not use the Premises.

6.2 Repairs and Maintenance. Landlord shall repair and maintain (i) the Common Areas, (ii) the structural portions of the Building, (iii) the exterior walls of the Building (including exterior windows and glazing), (iv) the roof, and (v) the basic plumbing, electrical, mechanical and heating, ventilating and air-conditioning systems serving the Premises, in the manner and to the extent customarily provided by landlords in similar buildings in the area. Tenant shall pay for such repairs as set forth in Paragraph 3.2. If any maintenance, repair or replacement is required because of any act, omission or neglect of duty by Tenant or its agents, employees, invitees or contractors, the cost thereof shall be paid by Tenant to Landlord as additional rent within thirty (30) days after billing.

6.3 Quiet Enjoyment. Upon Tenant's paying the rent and performing its other obligations, Landlord shall permit Tenant to peacefully and quietly hold and enjoy the Premises, subject to the provisions of this Lease.

6.4 Insurance. Landlord shall insure the Property, including the Building and Tenant Improvements and approved Alterations, if any, against damage by fire and standard extended coverage perils, and shall carry public liability insurance, all in such reasonable amounts as would be carried by a prudent owner of a similar building in the area. Landlord may carry any other forms of insurance as it or its mortgagee may deem advisable. Insurance obtained by Landlord shall not be in lieu of any insurance required to be maintained by Tenant. Landlord shall not carry

any insurance on Tenant's Property, and shall not be obligated to repair or replace any of Tenant's Property.

ARTICLE VII TENANT'S COVENANTS

7.1 Repairs, Maintenance and Surrender.

(a) *Repairs and Maintenance.* Tenant shall keep the Premises in good order and condition, and shall promptly repair any damage to the Premises excluding glass in exterior walls. Tenant shall also repair any damage to the rest of the Property, including glass in exterior walls, if such damage is attributable to Tenant's negligence or misuse caused by Tenant or its agents, employees, or invitees, licensees or independent contractors. All repairs shall be made in a workmanlike manner and any replacements or substitutions shall be of a quality, utility, value and condition similar to or better than the replaced or substituted item.

(b) *Surrender.* At the end of the Term, Tenant shall peaceably surrender the Premises in good order, repair and condition, except for reasonable wear and tear, and Tenant shall remove Tenant's Property and (if required by Landlord) any Alterations, repairing any damage caused by such removal and restoring the Premises and leaving them clean and neat. Any property not so removed shall be deemed abandoned and may be retained by Landlord or may be removed and disposed of by Landlord in such manner as Landlord shall determine. Tenant shall be responsible for costs and expenses incurred by Landlord in removing any Alterations and disposing of any such abandoned property, making any incidental repairs and replacements to the Premises, and restoring the Premises to its original condition.

7.2 Use.

(a) *General Use.* Tenant shall use the Premises only for the Permitted Uses, and shall not use or permit the Premises to be used in violation of any law or ordinance or of any certificate of occupancy issued for the Building or the Premises, or of the Rules and Regulations. Tenant shall not cause, maintain or permit any nuisance in, on or about the Property, or commit or allow any waste in or upon the Property. Tenant shall not use utility services in excess of amounts reasonably determined by Landlord to be within the normal range of demand for the Permitted Uses.

(b) *Obstructions and Exterior Displays.* Tenant shall not obstruct any of the Common Areas or any portion of the Property outside the Premises, and shall not, except as otherwise previously approved by Landlord, place or permit any signs, decorations, curtains, blinds, shades, awnings, aerials or flagpoles, or the like, that may be visible from outside the Premises. If Landlord designates a standard window covering for use throughout the Building, Tenant shall use this standard window covering to cover all windows in the Premises.

(c) *Floor Load.* Tenant shall not place a load upon the floor of the Premises exceeding the load per square foot such floor was designed to carry, as determined by applicable building code.

(d) *Compliance with Insurance Policies.* Tenant shall not keep or use any article in the Premises, or permit any activity therein, which is prohibited by any insurance policy covering the Building, or would result in an increase in the premiums thereunder.

(e) *Rules and Regulations.* Tenant shall observe and comply with the rules and regulations attached as Exhibit E (the "Rules and Regulations"), and all modifications thereto as made by Landlord and put into effect from time to time. Landlord shall not be responsible to Tenant for the violation or non-performance by any other tenant or occupant of the Building of the Rules and Regulations.

7.3 Assignment; Sublease. Tenant shall not assign its rights under this Lease nor sublet the whole or any part of the Premises without Landlord's prior written consent. In the event that Landlord grants such consent, Tenant shall remain primarily liable to Landlord for the payment of all rent and for the full performance of the obligations under this Lease and any excess rents collected by Tenant shall be paid to Landlord. Tenant shall be responsible for payment of all costs incurred by Landlord in connection with any such request for Landlord's consent to a proposed assignment or subletting, as provided in Paragraph 11.5. Any assignment or subletting which does not conform with this Paragraph 7.3 shall be void and a default hereunder.

In addition to, but not in limitation of, the foregoing: in the event of a request by Tenant for Landlord's consent to a proposed assignment of the Lease or a proposed subletting of twenty percent (20%) or more of the floor area of the Premises, Landlord, at Landlord's sole option, may terminate the Lease; and in the event of a request by Tenant for Landlord's consent to a proposed subletting of less than twenty percent (20%) of the floor area of the Premises, Landlord, at Landlord's sole option, may cancel the Lease with respect to the area in question for the proposed term of such sublease. Landlord shall exercise any such option by written notice given to Tenant within twenty-five (25) days after Landlord's receipt of such request from Tenant, and in each case such termination or cancellation shall take effect as of the date set forth in Landlord's said notice, which shall be not less than sixty (60) days and not more than one hundred twenty (120) days after the date of Landlord's said notice. If Landlord exercises any such option to terminate or cancel the Lease, Tenant shall surrender possession of the portion of the Premises to which the termination or cancellation applies on or before the date set forth in Landlord's notice, in accordance with the provisions of this Lease relating to the surrender of the Premises at expiration of the Term. If the Lease is cancelled as to a portion of the Premises only, Base Rent after the date of such cancellation shall be abated on a pro-rata basis, as determined by Landlord, and Tenant's Percentage shall be proportionally reduced. Landlord's failure to exercise such option to terminate or cancel the Lease shall not be construed as Landlord's consent to the proposed assignment or subletting.

For purposes of this Paragraph 7.3, "assignment" shall include, without limitation: (i) any transfer of Tenant's interest in this Lease by operation of law; (ii) any merger or consolidation of Tenant with or into any other firm or corporate entity, whether in a single transaction or a series of transactions; (iii) the transfer or sale of a controlling interest in Tenant, whether by sale of its capital stock or otherwise; or (iv) any agreement by which Tenant agrees to enter into or execute any assignment or other transfer of the Lease at the direction of any other party, or assigns Tenant's rights in and to the income arising from any such assignment or transfer to another party.

7.4 INDEMNITY. TENANT, AT TENANT'S EXPENSE, SHALL DEFEND (WITH COUNSEL SATISFACTORY TO LANDLORD), INDEMNIFY AND HOLD HARMLESS LANDLORD AND LANDLORD'S AGENTS, EMPLOYEES, INVITEES, LICENSEES AND CONTRACTORS FROM AND AGAINST ANY COST, CLAIM, ACTION,

LIABILITY OR DAMAGE OF ANY KIND ARISING FROM (I) TENANT'S USE AND OCCUPANCY OF THE PREMISES OR THE PROPERTY, OR ANY ACTIVITY DONE OR PERMITTED BY TENANT, IN, ON OR ABOUT THE PREMISES OR THE PROPERTY, (II) ANY BREACH OR DEFAULT BY TENANT OF ITS OBLIGATIONS UNDER THIS LEASE, OR (III) ANY NEGLIGENT, TORTIOUS OR ILLEGAL ACT OR OMISSION OF TENANT, ITS AGENTS, EMPLOYEES, INVITEES, LICENSEES OR CONTRACTORS. THE OBLIGATIONS OF TENANT UNDER THIS PARAGRAPH SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS LEASE. NOTHING IN THIS PARAGRAPH SHALL RELIEVE LANDLORD FROM, OR REQUIRE TENANT TO INDEMNIFY LANDLORD AGAINST, LIABILITY FOR DAMAGES TO PROPERTY OR INJURY TO PERSON CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD OR ITS AGENTS, EMPLOYEES OR CONTRACTORS. ALL PROPERTY KEPT, STORED OR MAINTAINED IN THE PREMISES SHALL BE AT THE SOLE RISK OF TENANT.

7.5 Tenant's Insurance. Tenant shall maintain in responsible companies qualified to do business, in good standing in the state in which the Premises are located and otherwise acceptable to Landlord and at its sole expense the following insurance: (i) commercial general liability insurance covering the Premises insuring Landlord as well as Tenant with limits which shall, at the commencement of the Term, be at least equal to the Public Liability Insurance Amount and from time to time during the Term shall be for such higher limits, if any, as are customarily carried in the area in which the Premises are located with respect to similar properties, (ii) workers' compensation insurance with statutory limits covering all of Tenant's employees working in the Premises, (iii) property insurance insuring Tenant's Property for the full replacement value of such items and (iv) business interruption insurance. There shall be no deductible for liability policies and a deductible not greater than \$5,000 for property insurance policies. Tenant shall deposit promptly with Landlord certificates for such insurance, and all renewals thereof, bearing the endorsement that the policies will not be canceled until after thirty (30) days' written notice to Landlord. All policies shall be taken out with insurers with a rating of A-IX by Best's and otherwise acceptable to Landlord.

7.6 Payment of Taxes. If at any time during the Term, any political subdivision of the state in which the Property is located, or any other governmental authority, levies or assesses against Landlord a tax or excise on rents or other tax (excluding income tax), however described, including but not limited to assessments, charges or fees required to be paid, by way of substitution for or as a supplement to real estate taxes, or any other tax on rent or profits in substitution for or as a supplement to a tax levied against the Property, Building or Landlord's personal property, then Tenant will pay to Landlord as additional rent its proportionate share based on Tenant's Percentage of said tax or excise.

7.7 Environmental Assurances.

(a) Covenants.

- (i) Tenant shall not cause any Hazardous Materials to be used, generated, stored or disposed of on, under or about, or transported to or from, the Premises unless the same is specifically approved in advance by Landlord in writing other than small quantities of retail, household, and office chemicals customarily sold over-the-counter to the public and which are related to Tenant's Permitted Uses.
- (ii) Tenant shall comply with all obligations imposed by Environmental Laws, and all other restrictions and regulations upon the use,

generation, storage or disposal of Hazardous Materials at, to or from the Premises.

- (iii) Tenant shall deliver promptly to Landlord true and complete copies of all notices received by Tenant from any governmental authority with respect to the use, generation, storage or disposal by Tenant of Hazardous Materials at, to or from the Premises and shall immediately notify Landlord both by telephone and in writing of any unauthorized discharge of Hazardous Materials or of any condition that poses an imminent hazard to the Property, the public or the environment.
- (iv) Tenant shall complete fully, truthfully and promptly any questionnaires sent by Landlord with respect to Tenant's use of the Premises and its use, generation, storage and disposal of Hazardous Materials at, to or from the Premises.
- (v) Tenant shall permit entry onto the Premises by Landlord or Landlord's representatives at any reasonable time to verify and monitor Tenant's compliance with its covenants set forth in this Paragraph 7.7 and to perform other environmental inspections of the Premises.
- (vi) If Landlord conducts any environmental inspections because it has reason to believe that Tenant's activities have or are likely to result in a violation of Environmental Laws or a release of Hazardous Materials on the Property, then Tenant shall pay to Landlord, as additional rent, the costs incurred by Landlord for such inspections.
- (vii) Tenant shall cease immediately upon notice from Landlord any activity which violates or creates a risk of violation of any Environmental Laws.
- (viii) After notice to and approval by Landlord, Tenant shall promptly remove, clean-up, dispose of or otherwise remediate, in accordance with Environmental Laws and good commercial practice, any Hazardous Materials on, under or about the Property resulting from Tenant's activities on the Property.

(b) *Indemnification.* Tenant shall indemnify, defend with counsel acceptable to Landlord and hold Landlord harmless from and against any claims, damages, costs, liabilities or losses (including, without limitation, any decrease in the value of the Property, loss or restriction of any area of the Property, and adverse impact of the marketability of the Property or Premises) arising out of Tenant's use, generation, storage or disposal of Hazardous Materials at, to or from the Premises.

(c) *Definitions.* Hazardous Materials shall include but not be limited to substances defined as "hazardous substances", "toxic substances", or "hazardous wastes" in the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as

amended; the federal Hazardous Materials Transportation Act, as amended; and the federal Resource Conservation and Recovery Act, as amended; those substances defined as "hazardous substances", "materials", or "wastes" under the law of the state in which the Premises are located; and as such substances are defined in any regulations adopted and publications promulgated pursuant to said laws ("Environmental Laws"); materials containing asbestos or urea formaldehyde; gasoline and other petroleum products; flammable explosives; radon and other natural gases; and radioactive materials.

(d) *Survival.* The obligations of Tenant in this Paragraph 7.7 shall survive the expiration or termination of this Lease.

7.8 **Americans With Disabilities Act.** Tenant shall comply with the Americans with Disabilities Act of 1990 ("ADA") and the regulations promulgated thereunder. Tenant hereby expressly assumes all responsibility for compliance with the ADA relating to the Premises and the activities conducted by Tenant within the Premises. Any Alterations to the Premises made by Tenant for the purpose of complying with the ADA or which otherwise require compliance with the ADA shall be done in accordance with this Lease; provided, that Landlord's consent to such Alterations shall not constitute either Landlord's assumption, in whole or in part, of Tenant's responsibility for compliance with the ADA, or representation or confirmation by Landlord that such Alterations comply with the provisions of the ADA.

ARTICLE VIII DEFAULT

8.1 **Default.** The occurrence of any one or more of the following events shall constitute a default hereunder by Tenant:

(a) The failure by Tenant to make any payment of Base Rent or additional rent or any other payment required hereunder, as and when due, where such failure shall continue for a period of five (5) business days after written notice thereof from Landlord to Tenant; provided, that Landlord shall not be required to provide such notice more than twice during the Term with respect to non-payment of Rent, the third such non-payment constituting a default without requirement of notice;

(b) The failure by Tenant to observe or perform any of the express or implied covenants or provisions of this Lease to be observed or performed by Tenant, other than as specified in clause (a) above, where such failure shall continue for a period of more than thirty (30) days after written notice thereof from Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said thirty (30) day period, diligently prosecutes such cure to completion, and completes such cure no later than sixty (60) days from the date of such notice from Landlord;

(c) The failure by Tenant, Guarantor (if any), or any present or future guarantor of all or any portion of Tenant's obligations under this Lease to pay its debts as they become due, or Tenant or any such Guarantor (if any) becoming insolvent, filing or having filed against it a petition under any chapter of the United States Bankruptcy Code, 11 U.S.C. Paragraph 101 et seq. (or any similar petition under any insolvency law of any jurisdiction) and such petition is not dismissed within sixty (60) days thereafter, proposing any dissolution, liquidation, composition, financial reorganization or recapitalization with creditors, making an

assignment or trust mortgage for the benefit of creditors, or if a receiver, trustee, custodian or similar agent is appointed or takes possession with respect to any property or business of Tenant or Guarantor (if any); or

(d) If the leasehold estate under this Lease or any substantial part of the property or assets of Tenant or of Guarantor of this leasehold is taken by execution, or by other process of law, or is attached or subjected to any involuntary encumbrance if such attachment or other seizure remains undismissed or undischarged for a period of ten business (10) days after the levy thereof.

8.2 Remedies of Landlord and Calculation of Damages.

(a) *Remedies.* In the event of any default by Tenant, whether or not the Term shall have begun, in addition to any other remedies available to Landlord at law or in equity, Landlord may, at its option and without further notice exercise any or all of the following remedies:

- (i) Terminate the Lease and upon notice to Tenant of termination of the Lease all rights of Tenant hereunder shall thereupon come to an end as fully and completely as if the date such notice is given were the date originally fixed for the expiration of the Term, and Tenant shall then quit and surrender the Premises to Landlord and Landlord shall have the right, without judicial process, to re-enter the Premises. No such expiration or termination of the Lease shall relieve Tenant of its liability and obligations under the Lease.
- (ii) Accelerate the payment of Base Rent and all additional rent under this Lease for the remainder of the Term and terminate the Lease in the same manner, and with the same force and effect, as provided in clause (i) above.
- (iii) Enter the Premises and cure any default by Tenant and in so doing, Landlord may make any payment of money or perform any other act. All sums so paid by Landlord, and all incidental costs and expenses, including reasonable attorneys' fees, shall be considered additional rent under this Lease and shall be payable to Landlord immediately upon demand, together with interest from the date of demand to the date of payment at the maximum lawful rate permitted to be charged by Landlord.

(b) *Calculation of Damages.* If this Lease is terminated as provided in Paragraph 8.2(a)(i) above, Tenant, until the end of the Term, or what would have been such Term in the absence of any such event, shall be liable to Landlord, as damages for Tenant's default, for the amount of the Base Rent and all additional rent and other charges which would be payable under this lease by Tenant if this Lease were still in effect, less the net proceeds of any reletting of the Premises actually collected by Landlord after deducting all Landlord's expenses in connection with such reletting, including, without limitation, all repossession costs, brokerage and management commissions, operating expenses, legal expenses, reasonable attorneys' fees, alteration costs and expenses of preparation of the Premises for such reletting. Tenant shall pay such damages to Landlord monthly on the days on which the Base Rent would have been

payable as if this Lease were still in effect, and Landlord shall be entitled to recover from Tenant such damages monthly as the same shall arise.

If Base Rent and additional rent are accelerated and this Lease is terminated as provided in Paragraph 8.2(a)(ii) above, Tenant shall be liable to pay to Landlord, in one payment, as damages for Tenant's default, an amount equal to the total amount of Base Rent and additional rent reserved in this Lease from the date of default to the date of expiration of the Term discounted at a fixed annual interest rate equal to the Federal Funds Rate as published in the Wall Street Journal on the date of Landlord's election to accelerate the rents hereunder.

Whether or not the Lease is terminated, Landlord shall in no way be responsible or liable for any failure to relet the Premises or for any failure to collect any rent upon such reletting.

(c) *No Limitations.* Nothing contained in this Lease shall limit or prejudice the right of Landlord to prove for and obtain in proceedings for bankruptcy or insolvency by reason of the termination of this Lease, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, the damages are to be provided, whether or not the amount be greater, equal to, or less than the amount of the loss or damages referred to above.

(d) *Cumulative Remedies.* Landlord's remedies under this Lease are cumulative and not exclusive of any other remedies to which Landlord may be entitled in case of Tenant's default or threatened default under this Lease, including, without limitation, the remedies of injunction and specific performance.

ARTICLE IX CASUALTY AND EMINENT DOMAIN

9.1 Casualty.

(a) *Casualty in General.* If, during the Term, the Premises, the Building or the Lot, are wholly or partially damaged or destroyed by fire or other casualty, and the casualty renders the Premises totally or partially inaccessible or unusable by Tenant in the ordinary conduct of Tenant's business, then Landlord shall, within sixty (60) days of the date of the damage, give Tenant a notice ("Damage Notice") stating whether, according to Landlord's good faith estimate, the damage can be repaired within one hundred eighty (180) days from the commencement of repair ("Repair Period"), without the payment of overtime or other premiums. The parties' rights and obligations shall then be governed according to whether the casualty is an Insured Casualty or an Uninsured Casualty as set forth in the following paragraphs.

(b) *Insured Casualty.* If the casualty results from a risk, the loss to Landlord from which is fully covered by insurance maintained by Landlord or for Landlord's benefit (except for any deductible amount), it shall be an "Insured Casualty" and governed by this Paragraph 9.1(b). In such event, if the Damage Notice states that the repairs can be completed within the Repair Period without the payment of overtime or other premiums, then Landlord shall promptly proceed to make the repairs, this Lease shall remain in full force and effect, and if Tenant did not cause the Insured Casualty, Base Rent shall be reduced, during the period between the casualty and completion of the repairs, in proportion to the portion of the Premises that is inaccessible or unusable during that period and which is, in fact, not utilized by Tenant.

Base Rent shall not be reduced by reason of any portion of the Premises being unusable or inaccessible for a period of five (5) business days or less. If the Damage Notice states that the repairs cannot, in Landlord's estimate, be completed within the Repair Period without the payment of overtime or other premiums, then either party may, terminate this Lease by written notice given to the other within thirty (30) days after the giving of the Damage Notice. If either party elects to terminate this Lease, the lease shall terminate as of the date of the occurrence of such damage or destruction and Tenant shall vacate the Premises five (5) business days from the date of the written notice terminating the Lease. If neither party so terminates, then this Lease shall remain in effect, Landlord shall make repairs, and Base Rent shall be proportionately reduced as set forth above during the period when the Premises is inaccessible or unusable and is not used by Tenant, and if Tenant did not cause the Insured Casualty.

(c) *Uninsured Casualty.* If the casualty is not an Insured Casualty as set forth in the previous paragraph, it shall be an "Uninsured Casualty" governed by this Paragraph 9.1(c). In such event, if the Damage Notice states that the repairs can be completed within the Repair Period without the payment of overtime or other premiums, Landlord may elect, by written notice given to Tenant within thirty (30) days after the Damage Notice, to make the repairs, in which event this Lease shall remain in effect and Base Rent shall be proportionately reduced as set forth above, and if Tenant did not cause the Insured Casualty. If Landlord does not so elect to make the repairs, or if the Damage Notice states that the repairs cannot be made within the Repair Period, this Lease shall terminate as of the date of the casualty and Tenant shall vacate the Premises five (5) business days from the date of Landlord's written notice to Tenant terminating the Lease.

(d) *Casualty within final six months of Term.* Notwithstanding anything to the contrary contained in this Paragraph 9.1, if the Premises or the Building is wholly or partially damaged or destroyed within the final six (6) months of the Term of this Lease, Landlord shall not be required to repair such casualty and either Landlord or Tenant may elect to terminate this Lease.

(e) *Tenant Improvements and Alterations.* If Landlord elects to repair after a casualty in accordance with this Paragraph 9.1, Landlord shall cause Tenant Improvements and Alterations which Landlord has approved, to be repaired and restored at Landlord's sole expense. Landlord shall have no responsibility for any personal property placed or kept in or on the Premises or the Building by Tenant or Tenant's agents, employees, invitees or contractors and Landlord shall not be required to repair any damage to, or make any repairs to or replacements of, such personal property.

(f) *Exclusive Remedy.* This Paragraph 9.1 shall be Tenant's sole and exclusive remedy in the event of damage or destruction to the Premises or the Building. No damages, compensation or claim shall be payable by Landlord for any inconvenience, any interruption or cessation of Tenant's business, or any annoyance, arising from any damage to or destruction of all or any portion of the Premises or the Building.

(g) *Waiver of Subrogation.* Landlord and Tenant shall cause each insurance policy obtained by each of them to provide that the insurer waives all right of recovery by way of subrogation against either Landlord or Tenant in connection with any loss or damage covered by such policy.

9.2 Eminent Domain.

(a) *Eminent Domain in General.* If the whole of the Premises, or so much of the Premises as to render the balance unusable by Tenant, shall be taken or appropriated under the power of eminent domain or condemnation (a "Taking"), either Landlord or Tenant may terminate this Lease and the termination date shall be the date of the Order of Taking, or the date possession is taken by the Taking authority, whichever is earlier. If any part of the Property is the subject of a Taking and such Taking materially affects the normal operation of the Building or Common Areas, Landlord may elect to terminate this Lease. A sale by Landlord under threat of a Taking shall constitute a Taking for the purpose of this Paragraph 9.2. No award for any partial or entire Taking shall be apportioned. Landlord shall receive (subject to the rights of Landlord's mortgagees) and Tenant hereby assigns to Landlord any award which may be made and any other proceeds in connection with such Taking, together with all rights of Tenant to such award or proceeds, including, without limitation, any award or compensation for the value of all or any part of the leasehold estate; provided that nothing contained in this Paragraph 9.2(a) shall be deemed to give Landlord any interest in or to require Tenant to assign to Landlord any separate award made to Tenant for (i) the taking of Tenant's Property, or (ii) interruption of or damage to Tenant's business, or (iii) Tenant's moving and relocation costs.

(b) *Reduction in Base Rent.* In the event of a Taking which does not result in a termination of the Lease, Base Rent shall be proportionately reduced based on the portion of the Premises rendered unusable, and Landlord shall restore the Premises or the Building to the extent of available proceeds or awards from such Taking. Landlord shall not be required to repair or restore any damage to Tenant's Property or any Alterations.

(c) *Sole Remedies.* This Paragraph 9.2 sets forth Tenant's and Landlord's sole remedies for Taking. Upon termination of this Lease pursuant to this Paragraph 9.2, Tenant and Landlord hereby agree to release each other from any and all obligations and liabilities with respect to this Lease except such obligations and liabilities which arise or accrue prior to such termination.

ARTICLE X RIGHTS OF PARTIES HOLDING SENIOR INTERESTS

10.1 *Subordination.* This Lease shall be subject and subordinate to any and all mortgages, deeds of trust and other instruments in the nature of a mortgage, ground lease or other matters of record ("Senior Interests") which now or at any time hereafter encumber the Property and Tenant shall, within twenty (20) days of Landlord's request, execute and deliver to Landlord such recordable written instruments as shall be necessary to show the subordination of this Lease to such Senior Interests. Notwithstanding the foregoing, if any holder of a Senior Interest succeeds to the interest of Landlord under this Lease, then, at the option of such holder, this Lease shall continue in full force and effect and Tenant shall attorn to such holder and to recognize such holder as its landlord.

10.2 *Mortgagee's Consent.* No assignment of the Lease and no agreement to make or accept any surrender, termination or cancellation of this Lease and no agreement to modify so as to reduce the Rent, change the Term, or otherwise materially change the rights of Landlord under this Lease, or to relieve Tenant of any obligations or liability under this Lease, shall be valid unless consented to by Landlord's mortgagees of record, if any.

ARTICLE XI GENERAL

11.1 Representations by Tenant. Tenant represents and warrants that any financial statements provided by it to Landlord were true, correct and complete when provided, and that no material adverse change has occurred since that date that would render them inaccurate or misleading. Tenant represents and warrants that those persons executing this Lease on Tenant's behalf are duly authorized to execute and deliver this Lease on its behalf, and that this Lease is binding upon Tenant in accordance with its terms, and simultaneously with the execution of this Lease, Tenant shall deliver evidence of such authority to Landlord in form satisfactory to Landlord.

11.2 Notices. Any notice required or permitted hereunder shall be in writing. Notices shall be addressed to Landlord c/o Manager at Manager's Address and to Tenant at Tenant's Address. Any communication so addressed shall be deemed duly given when delivered by hand, one day after being sent by Federal Express (or other guaranteed one day delivery service) or three days after being sent by registered or certified mail, return receipt requested. Either party may change its address by giving notice to the other.

11.3 No Waiver or Oral Modification. No provision of this Lease shall be deemed waived by Landlord or Tenant except by a signed written waiver. No consent to any act or waiver of any breach or default, express or implied, by Landlord or Tenant, shall be construed as a consent to any other act or waiver of any other breach or default.

11.4 Severability. If any provision of this Lease, or the application thereof in any circumstances, shall to any extent be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each provision hereof shall be valid and enforceable to the fullest extent permitted by law.

11.5 Requests by Tenant. Tenant shall pay, on demand, all costs incurred by Landlord, including without limitation reasonable attorneys' fees, in connection with any matter requiring Landlord's review or consent or any other requests made by Tenant under this Lease, regardless of whether such request is granted by Landlord.

11.6 Estoppel Certificate and Financial Statements.

(a) *Estoppel Certificate.* Within ten (10) days after written request by Landlord, Tenant shall execute, acknowledge and deliver to Landlord a written statement certifying (i) that this Lease is unmodified and in full force and effect, or is in full force and effect as modified and stating the modifications; (ii) the amount of Base Rent currently payable by Tenant to Landlord; (iii) Tenant's Percentage, the Base Year and Tenant's Share of Expenses currently payable by Tenant to Landlord; (iv) the date to which Base Rent and Tenant's Share of Expenses have been paid in advance; (v) the amount of any security deposited with Landlord; (vi) that Landlord is not in default hereunder or, if Landlord is claimed to be in default, stating the nature of any claimed default, and (vii) such other matters as may be reasonably requested by Landlord. Any such statement may be relied upon by a purchaser, assignee or lender. Tenant's failure to execute and deliver such statement within the time required shall be a default under this Lease and shall also be conclusive upon Tenant that this Lease is in full force and effect and has not been modified except as represented by Landlord; and there are no uncured defaults in Landlord's performance and Tenant has no right of offset, counterclaim or deduction against rent.

(b) *Financial Statements.* Tenant shall, without charge therefor, at any time (not to exceed twice per year), within ten (10) days following a request by Landlord, deliver to Landlord, or to any other party designated by Landlord, a true and accurate copy of Tenant's most recent financial statements. All requests made by Tenant regarding renewals or expansions must be accompanied by Tenant's most recent financial statements. All requests made by Tenant regarding subleases, or assignments must be accompanied by Tenant's prospective subtenant's and prospective assignee's most recent financial statements.

11.7 Waiver of Liability. Landlord and Tenant each hereby waive all rights of recovery against the other and against the officers, employees, agents, and representatives of the other, on account of loss by or damage to the waiving party or its property or the property of others under its control, to the extent that such loss or damage is insured against under any insurance policy that either may have in force at the time of the loss or damage. Each party shall notify its insurers that the foregoing waiver is contained in this Lease.

11.8 Execution, Prior Agreements and No Representations. This Lease shall not be binding and enforceable until executed by authorized representatives of Landlord and Tenant. This Lease contains all of the agreements of the parties with respect to the subject matter hereof and supersedes all prior dealings, whether written or oral, between them with respect to such subject matter. Each party acknowledges that the other has made no representations or warranties of any kind except as may be specifically set forth in this Lease.

11.9 Brokers. Each party represents and warrants that it has not dealt with any real estate broker or agent in connection with this Lease or its negotiation except Brokers identified in Part 1 of the Lease. Landlord agrees to pay Brokers the commission arising under this Lease pursuant to a separate written agreement. Each party shall indemnify the other and hold it harmless from any cost, expense, or liability (including costs of suit and reasonable attorneys' fees) for any compensation, commission or fees claimed by any other real estate broker or agent in connection with this Lease or its negotiation by reason of any act or statement of the indemnifying party.

11.10 Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that only the original Landlord named herein shall be liable for obligations accruing before the beginning of the Term, and thereafter the original Landlord named herein and each successive owner of the Premises shall be liable only for obligations accruing during the period of their respective ownership.

11.11 Applicable Law and Lease Interpretation. This Lease shall be construed, governed and enforced according to the laws of the state in which the Property is located. In construing this Lease, paragraph headings are for convenience only and shall be disregarded. Any recitals herein or exhibits attached hereto are hereby incorporated into this Lease by this reference. Time is of the essence of this Lease and every provision contained herein. The parties acknowledge that this Lease was freely negotiated by both parties, each of whom was represented by counsel; accordingly, this Lease shall be construed according to the fair meaning of its terms, and not against either party.

11.12 Costs of Collection, Enforcement and Disputes. Tenant shall pay all costs of collection, including reasonable attorneys' fees, incurred by Landlord in connection with any

default by Tenant. If either Landlord or Tenant institutes any action to enforce the provisions of this Lease or to seek a declaration of rights hereunder, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs as part of any award. Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other, on or in respect to any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant hereunder, Tenant's use or occupancy of the Premises, and/or claim of injury or damage.

11.13 Holdover. If Tenant holds over in occupancy of the Premises after the expiration of the Term, Tenant shall, at the election of Landlord (i) become a tenant at sufferance only on a month-to-month basis subject to the terms and conditions herein specified, so far as applicable; or (ii) be deemed to have renewed this Lease for a one year period under the terms and conditions herein specified, so far as applicable. In either case, Tenant shall pay rent during the holdover period, at a base rental rate equal to one hundred fifty percent (150%) of the Base Rent in effect at the end of the Term for the first sixty (60) days of the Holdover period and two hundred percent (200%) thereafter, plus the amount of Tenant's Share of Expenses then in effect. Tenant shall also be liable for all damages sustained by Landlord on account of such holding over.

11.14 Force Majeure. If Landlord or Tenant is prevented from or delayed in performing any act required of it hereunder, and such prevention or delay is caused by strikes, labor disputes, inability to obtain labor, materials, or equipment, inclement weather, acts of God, governmental restrictions, regulations, or controls, judicial orders, enemy or hostile government actions, civil commotion, fire or other casualty, or other causes beyond such party's reasonable control ("Force Majeure"), the performance of such act shall be excused for a period equal to the period of prevention or delay. A party's financial inability to perform its obligations shall in no event constitute Force Majeure. Nothing in this Paragraph 11.14 shall excuse or delay Tenant's obligation to pay any rent or other charges due under this Lease.

11.15 Limitation On Liability. Landlord, and its partners, directors, officers, shareholders, trustees or beneficiaries, shall not be liable to Tenant for any damage to or loss of personal property in, or to any personal injury occurring in, the Premises, unless such damage, loss or injury is the result of the gross negligence of Landlord or its agents as determined by a final non-appeal judicial proceeding. The obligations of Landlord under this Lease do not constitute personal obligations of the individual partners, directors, officers, shareholders, trustees or beneficiaries of Landlord, and Tenant shall not seek recourse against the partners, directors, officers, shareholders, trustees or beneficiaries of Landlord, or any of their personal assets for satisfaction of any liability with respect to this Lease. In the event of any default by Landlord under this Lease, Tenant's sole and exclusive remedy shall be against Landlord's interest in the Property.

11.16 Notice of Landlord's Default. The failure by Landlord to observe or perform any of the express or implied covenants or provisions of this Lease to be observed or performed by Landlord shall not constitute a default by Landlord unless such failure shall continue for a period of more than thirty (30) days after written notice thereof from Tenant to Landlord specifying Landlord's default; provided, however, that if the nature of Landlord's default is such that more than thirty (30) days are reasonably required for its cure, then Landlord shall not be deemed to be in default if Landlord commences such cure within said thirty (30) day period and diligently prosecutes such cure to completion. Tenant shall, simultaneously with delivery to Landlord,

provide written notice specifying the Landlord default to the holder of any first mortgage or deed of trust covering the Premises whose name and address have been furnished to Tenant in writing.

11.17 Lease not to be Recorded. Tenant agrees that it will not record this Lease. Both parties shall, upon the request of either, execute and deliver a notice or short form of this Lease in such form, if any, as may be permitted by applicable statute. If this Lease is terminated before the Term expires the parties shall execute, deliver and record an instrument acknowledging such fact and the actual date of termination of this Lease, and Tenant hereby appoints Landlord its attorney-in-fact, coupled with an interest, with full power of substitution to execute such instrument.

11.18 Security Deposit. Upon the execution and delivery of this Lease, Tenant shall pay to Landlord the Security Deposit, which shall be held as security for Tenant's performance as herein provided and refunded to Tenant at the end of the Term subject to Tenant's satisfactory compliance with the conditions hereof. The Security Deposit may be commingled with other funds of Landlord and no interest shall accrue thereon or be payable by Landlord with respect to the Security Deposit. If all or any part of the Security Deposit is applied to an obligation of Tenant hereunder, Tenant shall immediately upon request by Landlord restore the Security Deposit to its original amount.

11.19 Guaranty of Lease. If Landlord and Tenant intend for this Lease to be guaranteed by the Guarantor, upon the execution and delivery of this Lease, and as a condition to the effectiveness of this Lease, Tenant shall cause Guarantor, if any, to execute and deliver to Landlord a guaranty in the form attached as Exhibit F. It shall constitute a default under this Lease if any Guarantor fails or refuses, upon reasonable request by Landlord, to give: (i) evidence of the due execution of the guaranty called for by this Lease, (ii) current financial statements of Guarantor as may from time to time be requested by Landlord, (iii) an estoppel certificate, or (iv) written confirmation that the guaranty is still in effect.

ARTICLE XII MISCELLANEOUS

12.1 Landlord Transfer. Landlord may transfer, in whole or in part, the Building and any of its rights under this Lease. If Landlord assigns its rights under this Lease, then Landlord shall thereby be released from any further obligations hereunder.

12.2 Landlord's Liability. If Landlord is in default under Section 11.15 above, Tenant's exclusive remedy shall be an action for damages, and Tenant's damages shall be limited to Tenant's actual direct (excluding consequential and punitive damages) damages therefor.

12.3 Joint and Several Liability. If there is more than one Tenant, then the obligations hereunder imposed upon Tenant shall be joint and several. If there is a guarantor of Tenant's obligations hereunder, then the obligations hereunder imposed upon Tenant shall be the joint and several obligations of Tenant and such guarantor, and Landlord need not first proceed against Tenant before proceeding against such guarantor nor shall any such guarantor be released from its guaranty for any reason whatsoever.

12.4 No Offer. The submission of this Lease to Tenant shall not be construed as an offer, nor shall Tenant have any rights under this Lease unless Landlord executes a copy of this

Lease and delivers it to Tenant.

12.5 Confidentiality. Tenant acknowledges and agrees that the terms of this Lease are confidential and constitute proprietary information of Landlord. Disclosure of the terms hereof could adversely affect the ability of Landlord to negotiate other leases with respect to the Building and may impair Landlord's relationship with other tenants of the Building. Tenant agrees that it and its partners, officers, directors, employees, brokers, and attorneys, if any, shall not disclose the terms and conditions of this Lease to any other person or entity without the prior written consent of Landlord which may be given or withheld by Landlord, in Landlord's sole discretion. It is understood and agreed that damages alone would be an inadequate remedy for the breach of this provision by Tenant, and Landlord shall also have the right to seek specific performance of this provision and to seek injunctive relief to prevent its breach or continued breach.

12.6 Intentionally Deleted.

12.7 Authority. If Tenant is a corporation, trust, or general or limited partnership, Tenant, and each individual executing this Lease on behalf of such entity, represents and warrants that such individual is duly authorized to execute and deliver this Lease on behalf of said entity, that said entity is duly authorized to enter into this Lease, and that this Lease is enforceable against said entity in accordance with its terms. If Tenant is a corporation, trust or partnership, Tenant shall deliver to Landlord upon demand evidence of such authority satisfactory to Landlord.

12.8 Time of Essence. Time is of the essence with respect to each of the obligations to be performed by Tenant and Landlord under this Lease.

12.9 WAIVER OF TRIAL BY JURY. EACH PARTY WAIVES TRIAL BY JURY IN THE EVENT OF ANY LEGAL PROCEEDING BROUGHT BY THE OTHER IN CONNECTION WITH THIS LEASE. EACH PARTY SHALL BRING ANY ACTION AGAINST THE OTHER IN CONNECTION WITH THIS LEASE IN A FEDERAL OR STATE COURT LOCATED IN COUNTY WHERE THE BUILDING IS LOCATED, CONSENTS TO THE JURISDICTION OF SUCH COURTS, AND WAIVES ANY RIGHT TO HAVE ANY PROCEEDING TRANSFERRED FROM SUCH COURTS ON THE GROUND OF IMPROPER VENUE OR INCONVENIENT FORUM.

12.10 Intentionally Deleted.

12.11 OFAC. Neither Tenant nor any of its affiliates, nor any of their respective partners, members, shareholders or other equity owners, and none of their respective employees, officers, directors, representatives or agents, is a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action.

12.12 DTPA. LANDLORD AND TENANT WAIVE THEIR RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT, SECTION 17.41 ET. SEQ., BUSINESS & COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. EACH, AFTER CONSULTATION WITH AN ATTORNEY OF ITS SELECTION, VOLUNTARILY CONSENTS TO THIS WAIVER.

12.13 Security Deposit/Calculation. Tenant hereby expressly waives the requirements and applicability of Tex. Prop. Code §§ 93.005 – 93.012, and agrees that Landlord shall return to Tenant the balance of the Security Deposit not applied to satisfy Tenant's obligations within a reasonable time after the Term ends, provided Tenant has performed all of its obligations hereunder. If such waiver is not effective under applicable law, Landlord shall, within the time required by applicable law, return to Tenant the portion of the Security Deposit remaining after deducting all damages, charges and other amounts permitted by law. Landlord and Tenant agree that such deductions shall include, without limitation, all damages and losses that Landlord has suffered or that Landlord reasonably estimates that it will suffer as a result of any breach of the Lease by Tenant. If Landlord transfers its interest in the Premises, then Landlord may assign the Security Deposit to the transferee and Landlord thereafter shall have no further liability for the return of the Security Deposit. Landlord and Tenant are knowledgeable and experienced in commercial transactions and agree that the provisions set forth in the Lease for determining charges, amounts and additional rent payable by Tenant are commercially reasonable and valid even though such methods may not state a precise mathematical formula for determining such charges. Accordingly, Tenant hereby voluntarily and knowingly waives all rights and benefits of Tenant under Section 93.012 of the Texas Property Code, as such Section now exists or as may be hereafter amended or succeeded.

12.14 Default. Notwithstanding anything contained in the Lease to the contrary, in the event of a default by Tenant, Landlord has the right to terminate Tenant's right to possession of the Premises and change the locks, without judicial process, and, in compliance with applicable Law, expel and remove Tenant, Tenant's Property and any parties occupying all or any part of the Premises. If Landlord terminates Tenant's possession of the Premises under this Section, Landlord shall have no obligation to post any notice and Landlord shall have no obligation whatsoever to tender to Tenant a key for new locks installed in the Premises.

12.15 Taxes. Tenant hereby waives any and all rights under Section 41.413 of the Texas Property Tax Code granting to tenant the right to contest appraised values, or to receive notice of reappraised values, on all or any portion of the Building irrespective of whether Landlord has elected to contest same. To the extent such waiver is prohibited by applicable law, Tenant hereby appoints Landlord as Tenant's attorney in fact, coupled with an interest, to appear and take all actions on behalf of Tenant which Tenant may have under said Section of the Code with respect to the Building, but not with respect to Tenant's personal property located within the Premises.


12.16 Indemnity. TENANT HEREBY ACKNOWLEDGES THAT THE WAIVER OF SUBROGATION PROVISION APPLIES EVEN IF THE RELEASED PARTY IS NEGLIGENT.

[SIGNATURES FOLLOW NEXT PAGE]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease, which includes the cover sheet, the foregoing Standard Provisions, Additional Provisions, if any, and Exhibits attached to this Lease, with the intent that each of the parties shall be legally bound thereby and that this Lease shall become effective as of the Date of Lease.

TENANT:

TAYLOR BEAN & WHITAKER MORTGAGE CORP.

By: 
Name: Lee B. Farkas
Title: Secretary
Date: April 11, 2007

LANDLORD:

SUN LIFE ASSURANCE COMPANY OF CANADA

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Date: _____

PART III ADDITIONAL PROVISIONS

The following provisions ("Additional Provisions") identified below and attached and/or set forth below are included as part of the Lease between Landlord and Tenant. Capitalized terms used in any of the Additional Provisions and not otherwise defined shall have the meanings given such terms in Part I and Part II of this Lease. Unless express reference is made to a provision in Part I and Part II of this Lease for the purpose of modifying such provision, in the event of any conflict between the Additional Provisions and the provisions of Part I and Part II of this Lease, the provisions contained in Parts I and II shall control.

None

PART IV EXHIBITS

EXHIBIT A

FLOOR PLAN OF PREMISES

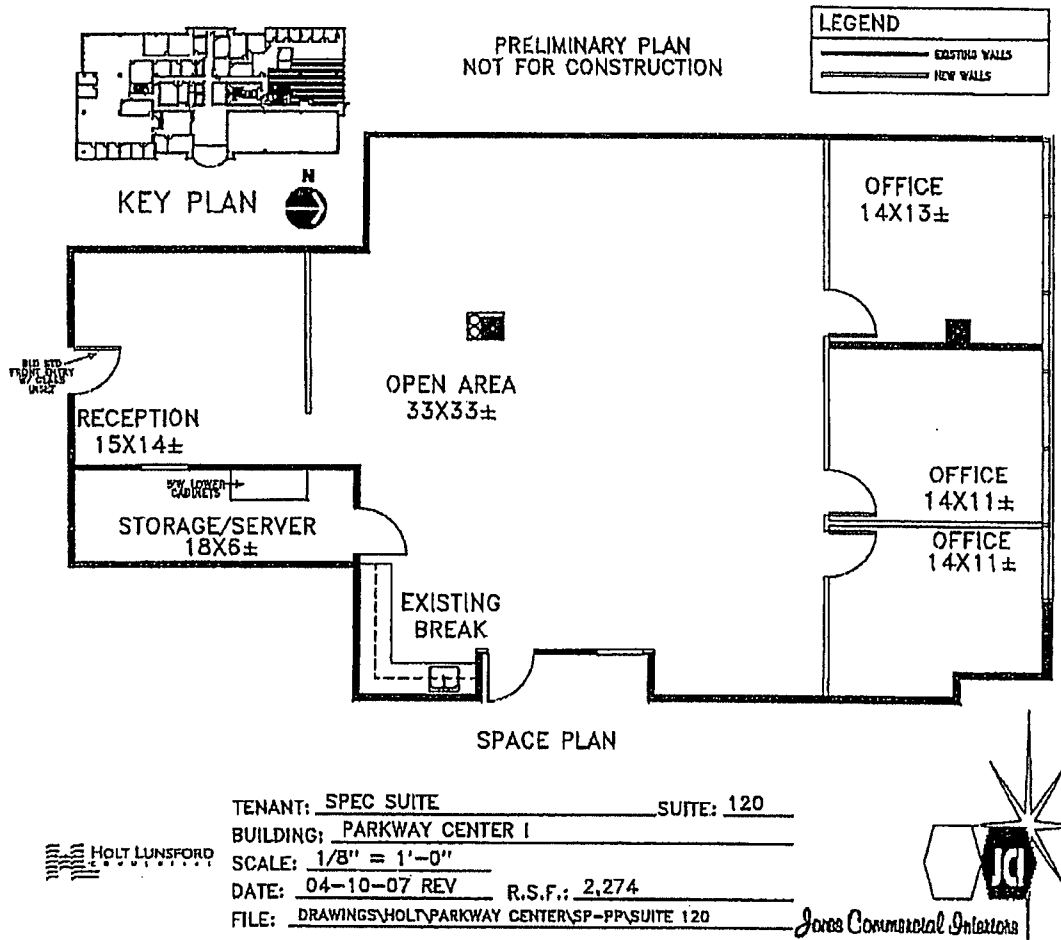


EXHIBIT B

EXTENSION OPTION

1. Subject to any existing rights of current tenants of the Building, provided no default exists at the time of such election, Tenant is occupying the entire Premises and Tenant's financial condition is reasonably acceptable to Landlord, Tenant may renew this Lease for one (1) additional period of three (3) years on the same terms provided in this Lease (except as set forth below), by delivering written notice of ("Tenant's Notice") the exercise thereof to Landlord not later than twelve (12) months prior to the end of the initial Term. On or before the commencement date of the extended Term, Landlord and Tenant shall execute an amendment to this Lease extending the Term on the same terms provided in this Lease, except as follows:

- (a) The Base Rent payable for each month during each such extended Term shall be the greater of (a) the asking rental rate for buildings comparable to the Building, at the commencement of such extended Term, for space of equivalent quality, size, utility and location, with the length of the extended Term and the credit standing of Tenant to be taken into account but in no event less than the amount paid by Tenant during the last year of the Term;
- (b) Tenant shall have no further renewal options unless expressly granted by Landlord in writing;
- (c) Landlord shall lease to Tenant the Premises in their then-current condition, and Landlord shall not provide to Tenant any allowances (e.g., moving allowance, construction allowance, and the like) or other tenant inducements; and
- (d) any market lease form changes requested by Landlord.

2. Within thirty (30) days following delivery of Tenant's Notice, Landlord shall deliver to Tenant a written notice ("Landlord's Notice") specifying the Base Rent rate per rentable square foot per annum for the applicable additional term. Tenant shall have ten (10) days following delivery of Landlord's Notice to notify Landlord in writing ("Tenant's Renewal Notice") of (i) Tenant's exercise of its right to renew the Lease at the Base Rent rate proposed by Landlord, or (ii) Tenant's election not to exercise its right to renew the Lease. Tenant's failure to timely deliver Tenant's Renewal Notice shall be deemed acceptance by Tenant of the Base Rent rate proposed by Landlord.

3. Tenant's right to lease the Premises pursuant to this Exhibit is and shall at all times be subject and subordinate to the rights of other tenants currently in effect with respect to such space, whether exercised or unexercised.

4. Tenant's rights under this Exhibit shall terminate if (i) this Lease or Tenant's right to possession of the Premises is terminated, (ii) Tenant assigns any of its interest in this Lease or sublets any portion of the Premises, or (iii) Tenant fails to timely exercise its option under this Exhibit, time being of the essence with respect to Tenant's exercise thereof.

EXHIBIT C

NOTICE OF LEASE TERM DATES

Date: _____

[Tenant]

Re: Lease dated _____ between Sun Life Assurance
Company of Canada, Landlord, and _____, Tenant,
(the "Lease") concerning the Premises (as defined in the Lease) located at

Ladies and Gentlemen:

In accordance with the Lease, please confirm the following by signing below:

1. The Premises have been accepted by Tenant as being substantially complete in accordance with the Lease, and there is no deficiency in construction.
2. Tenant has possession of the Premises. The Commencement Date of the Lease is _____ and the Term shall end on _____.

Your rent checks should be made payable to _____
_____. [Manager].

AGREED AND ACCEPTED

[Tenant]

[Manager]

Taylor Bean & Whitaker Mortgage Corp.,
a _____ corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT D

RULES AND REGULATIONS

1. The driveways, parking areas, plazas, sidewalks, entrances, passages, courts, vestibules, stairwells, corridors or halls shall not be obstructed or encumbered by any tenant or used for any purpose other than ingress and egress to and from the premises.

2. No awnings, canopies, or other projections shall be attached to the outside walls of the building. No drapes, curtains, blinds, shades, or screens shall be attached to or hung in, or used in connection with, any window or door or the premises without the prior written consent of Landlord.

3. Tenants are prohibited from displaying any sign, picture, advertisement or notice on the inside or outside of the building, or the premises, except the usual name signs on the doors leading to the premises, which shall conform to the requirements of the management of the building, and excepting also the name strips on the directory board of the building. The directory board of the building will be maintained by Landlord. In the event of the violation of the foregoing by any tenant, Landlord may remove same without any liability, and may charge the expense incurred by such removal to the tenant.

4. The sash doors, windows, and doors that reflect or admit light and air into the halls, passageways or other public places in the building shall not be covered or obstructed by any tenant, nor shall any bottles, parcels or other articles be placed on the windowsills or perimeter fan coil consoles.

5. No showcases or other articles shall be put in front of or affixed to any part of the exterior of the building nor placed in the halls, corridors, or vestibules without the prior written consent of Landlord.

6. The water and wash closets and other plumbing fixtures shall not be used for any purposes other than those for which they were constructed, and no sweepings, rubbish, rags or other substances shall be thrown therein. All damages resulting from any misuse of the fixtures shall be borne by the tenant who, or whose servants, employees, agents, visitors or licensees, shall have caused the same.

7. No tenant shall mark, paint, drill into, or in any way deface any part of the premises or the building of which they form a part. No boring, cutting or stringing of wires shall be permitted, except with the prior written consent of Landlord, and as Landlord may direct. No tenant shall lay any type of floor covering without first obtaining Landlord's written permission.

8. No bicycles, vehicles or animals of any kind shall be brought into or kept in or about the premises, and no cooking shall be done or permitted by any tenant on the premises. No tenant shall cause or permit any unusual or objectionable odors to be produced upon or permeate from the premises.

9. No tenant shall make or permit to be made, any unseemly or disturbing noises or disturb or interfere with occupants of this building, or premises, or neighboring buildings.

10. No tenant, and no servants, employees, agents, visitors or licensees of any tenant, shall at any time bring or keep upon the premises any inflammable, combustible or explosive fluid, chemical or substance.

11. Tenants are prohibited from installing additional locks upon any of the doors or having duplicate keys made for any of the doors leading to the premises. (All necessary keys will be furnished to the tenants by Landlord). Each tenant must, upon the termination of tenancy, return all keys to Landlord.

12. Landlord shall have the right to prohibit any advertising by any tenant which, in Landlord's opinion, tends to impair the reputation of the building or their desirability for offices, and upon written notice from Landlord, the tenants shall refrain from or discontinue such advertising.

13. The premises shall not be used for lodging or sleeping.

14. The requirements of tenants will be attended to only upon application at the office of the building. Building employees shall not perform any work or do anything outside of their regular duties, unless under special instructions from the office of the building.

15. Canvassing, soliciting and peddling in the building are prohibited and each tenant shall cooperate to prevent the same.

16. Landlord and its agents may retain a pass key to the premises and shall have the right to enter the premises at any and all times for the purpose of servicing and examining the same.

17. Landlord reserves the right to make such other and further Rules and Regulations as in its judgment may from time to time be needful and proper, and upon delivery of the same to the tenants they shall become binding upon the parties hereto.

Re: Parkway Centre I
Plano, Texas

FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE (this "Amendment") has been executed as of the 10th day of July, 2008, by SUN LIFE ASSURANCE COMPANY OF CANADA, a Canadian corporation ("Landlord"), and TAYLOR BEAN & WHITAKER MORTGAGE CORP, a Florida corporation ("Tenant").

RECITALS:

A. Landlord and Tenant have heretofore executed that certain Office Lease dated April 11, 2007 (the "Lease") pursuant to which Tenant leased 2,274 square feet of rentable area on the first (1st) floor of that certain building known as Parkway Centre I, located at 2901 Dallas Parkway in Plano, Texas, and more particularly described in the Lease (the "Building").

B. Landlord and Tenant desire to execute this Amendment in order to evidence their agreement to (i) expand the Premises to include additional space; (ii) extend the Term of the Lease; and (iii) make certain other amendments to the Lease, all as more particularly set forth in this Amendment.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

Article I

CERTAIN AMENDMENTS

SECTION 1.01. Premises. As of September 1, 2008 (the "Effective Date"), and subject to the terms and conditions set forth in this Amendment, the Lease shall be amended to reflect that the Premises shall be expanded to include an additional 2,466 rentable square feet (the "Additional Space") on the first (1st) floor of the Building, so that the Premises shall then consist of approximately 4,740 rentable square feet on the first (1st) floor of the Building, as outlined and identified on Exhibit A to this Amendment. Landlord shall not be liable for the failure to give possession of the Additional Space on the Effective Date by reason of the holding over or retention of possession thereof by any tenant or occupants but the rent for the Additional Space shall be abated until possession is delivered to Tenant and such abatement shall constitute full settlement of all claims that Tenant might otherwise have against Landlord by reason of Landlord's failure to give possession of the Additional Space to Tenant on the Effective Date.

SECTION 1.02. Tenant's Proportionate Share. As of the Effective Date, the Lease shall be amended to reflect that Tenant's Proportionate Share shall be 5.42%.

SECTION 1.03. Lease Term. The Term of the Lease is hereby extended so that the Term of the Lease shall expire on the date which is five (5) years following the Effective Date, plus any partial calendar month following the Effective Date, unless sooner terminated as provided in the Lease.

SECTION 1.04. Base Rent. The Lease is hereby amended to reflect that effective as of the Effective Date, the Base Rent shall be as follows:

<u>Period</u>	<u>Annual Base Rent Rate Per Rentable Square Foot</u>	<u>Monthly Base Rent</u>
Months 1 - 24	\$21.00	\$8,295.00
Months 25 - 36	\$21.50	\$8,492.50
Months 37 - 60	\$22.00	\$8,690.00

SECTION 1.05. Parking. As of the Effective Date, Tenant shall pay for and be permitted to use ten (10) additional non-reserved vehicular parking spaces, at no additional charge.

SECTION 1.06. Tenant Improvements. Except as provided in Exhibit B attached to this Amendment and made a part hereof for all purposes, Tenant accepts the Additional Space "AS-IS", without warranty of suitability or fitness for a particular purpose, and Landlord has no obligation to make, pay for, or reimburse Tenant for any improvements, alterations or additions to the Premises.

SECTION 1.07. Commissions. Tenant represents that it has dealt with no broker, agent or other person in connection with this Amendment other than Holt Lunsford Commercial and Vanguard Commercial Group ("Broker") and that no broker, agent or other person brought about this Amendment (other than Broker), and Tenant shall indemnify and hold Landlord harmless from and against any and all claims, losses, costs or expenses (including attorneys' fees and expenses) by any broker, agent or other person (except those of Broker) claiming a commission or other form of compensation by virtue of having dealt with Tenant with regard to this transaction contemplated by this Amendment. The provisions of this paragraph shall survive the expiration of the Term of the Lease or any renewal or extension thereof.

SECTION 1.08. Further Amendments. The Lease shall be and hereby is further amended wherever necessary, even though not specifically referred to herein, in order to give effect to the terms of this Amendment.

Article II

MISCELLANEOUS

SECTION 2.01. Ratification. The Lease, as amended hereby, is hereby ratified, confirmed and deemed in full force and effect in accordance with its terms. Tenant represents to Landlord that Tenant (a) is currently unaware of any default by Landlord under the Lease; and (b) has full power and authority to execute and deliver this Amendment and this Amendment represents a valid and binding obligation of Tenant enforceable in accordance with its terms.

SECTION 2.02. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Texas.

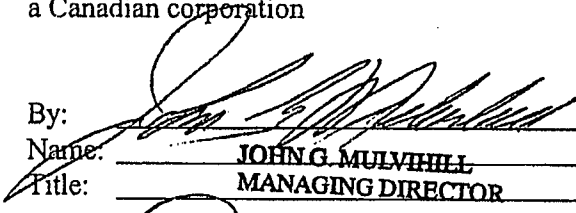
SECTION 2.03. Counterparts. This Amendment may be executed in multiple counterparts each of which is deemed an original but together constitute one and the same instrument. This Amendment may be executed by facsimile and each party has the right to rely upon a facsimile counterpart of this Amendment signed by the other party to the same extent as if such party had received an original counterpart.

IN WITNESS WHEREOF, this Amendment has been executed as of (but not necessarily on) the date and year first above written.

Dated: July 21, 2008

LANDLORD:

SUN LIFE ASSURANCE COMPANY OF CANADA,
a Canadian corporation

By: 
Name: JOHN G. MULVHILL
Title: MANAGING DIRECTOR

By: 
Name: DEBORAH K. TIRONE
Title: MANAGING DIRECTOR

Date: July 10th, 2008

TENANT:

TAYLOR BEAN & WHITAKER MORTGAGE CORP.,
a Florida corporation


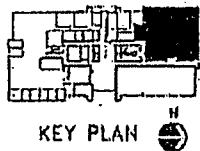
By: 
Name: Greg B. Larkas
Title: Secretary

EXHIBIT A

Floor Plan of Premises as Expanded



PRELIMINARY PLAN
NOT FOR CONSTRUCTION

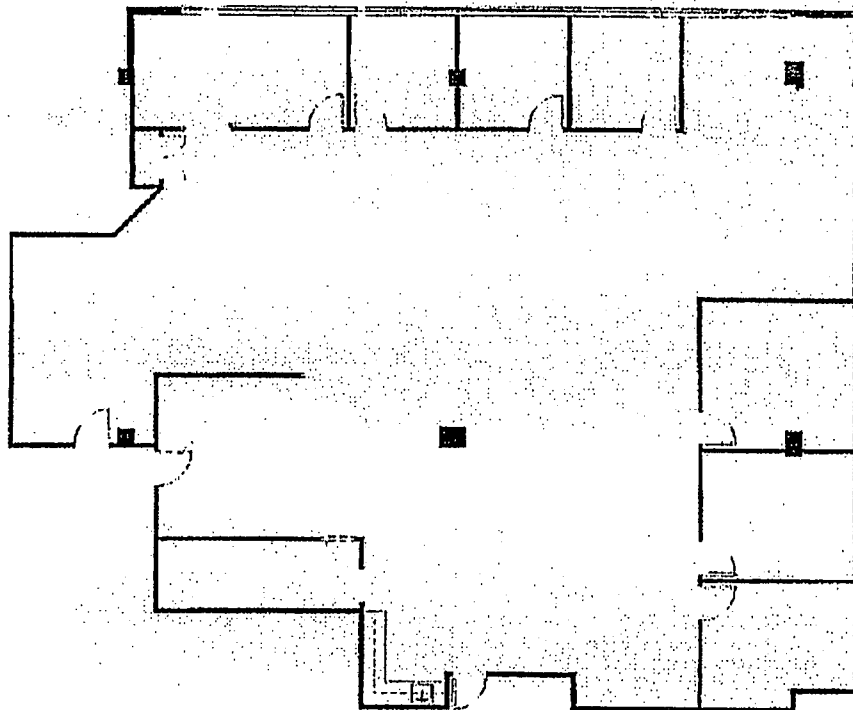


EXHIBIT B

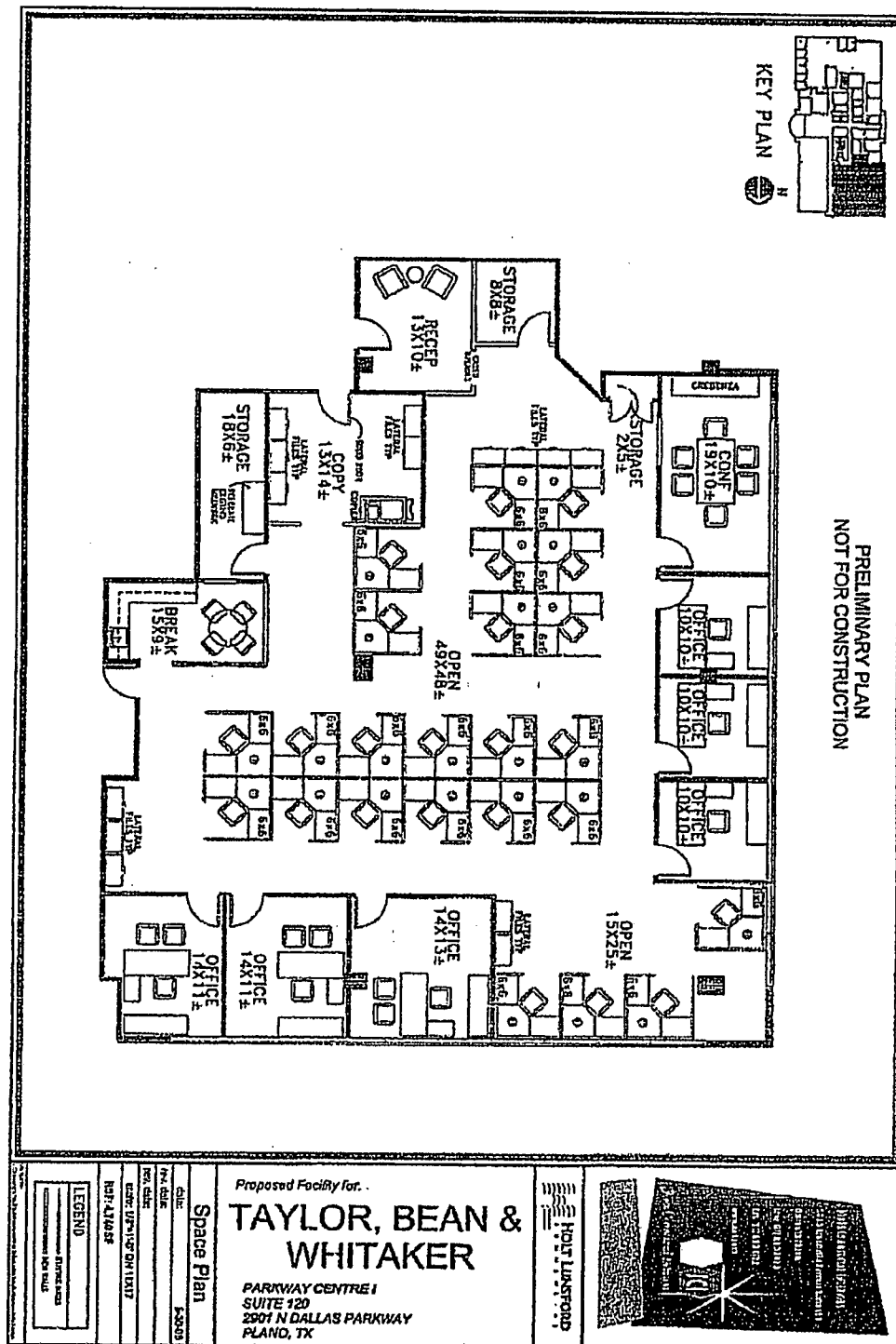
Tenant Finish-Work: Plans

1. Except as set forth in this Exhibit, Tenant accepts the Additional Space in its "as is" condition on the date that this Amendment is entered into.

2. On or before the execution of this Amendment, Tenant has delivered to Landlord a space plan depicting improvements to be installed in the Additional Space, which plans are attached hereto as Exhibit C and made a part hereof for all purposes ("Working Drawings"). As used herein, "Work" shall mean all improvements to be constructed in accordance with and as indicated on the Working Drawings. Approval by Landlord of the Working Drawings shall not be a representation or warranty of Landlord that such drawings are adequate for any use, purpose, or condition, or that such drawings comply with any applicable law or code, but shall merely be the consent of Landlord to the performance of the Work. Tenant shall, at Landlord's request, sign the Working Drawings to evidence its review and approval thereof. All changes in the Work must receive the prior written approval of Landlord. Landlord shall cause the Work to be performed in accordance with the Working Drawings using available Building-standard quantities and types of materials. The Work shall be performed only by contractors and subcontractors approved in writing by Landlord, which approval shall not be unreasonably withheld or delayed.

3. Landlord shall bear the cost of performing the Work depicted on the Working Drawings using available Building-standard quantities and types of materials. Tenant shall bear the entire additional costs incurred by Landlord in performing the Work and any related architectural or engineering service costs because of any change to the Working Drawings and the Work requested by Tenant and any above-Building standard finishes and/or materials requested by Tenant (each, a "Tenant Expense"). Tenant shall pay Landlord an amount equal to the estimated Tenant Expense at the time of such change; Tenant shall pay to Landlord any remaining portion of the Tenant Expense upon substantial completion of the Work and before Tenant occupies the Additional Space to conduct business therein.

Plans



STUTZMAN, BROMBERG, ESSERMAN & PLIFKA

A PROFESSIONAL CORPORATION

ATTORNEYS AND COUNSELORS

2323 BRYAN STREET

SUITE 2200

DALLAS, TEXAS 75201-2689

TELEPHONE: (214) 969-4900

FACSIMILE: (214) 969-4999

E-MAIL: hartwick@sbep-law.com

JO E. HARTWICK

November 19, 2009

TB&W Mortgage
c/o BMC Group, Claims Processing
18750 Lake Drive East
Chanhassen, MN 55317

Re: *In re: Taylor, Bean & Whitaker Mortgage Corp.*; Case No. 3:09-bk-07047-JAF

Dear Sir/Madam:

Enclosed please find an original and one copy of a Proof of Claim to be filed in the above referenced case on behalf of Sun Life Assurance Company of Canada. Please file the original and return the file stamped copy to my office in the enclosed self-addressed stamped envelope.

Thank you for your assistance.

Sincerely,



Jo E. Hartwick